IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 27116 of 2007(C)

PETITIONER:

JAYALAL .C.
S/O. CHANDRABOSE,CHERAMPILLYTHEKKETHIL (H0
KANJAVELI P.O.,KOLLAM.

BY ADV. SRI.M.K.CHANDRA MOHANDAS

RESPONDENTS:
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1. THE STATE OF KERALA,REPRESENTED BY
THE SECRETARY TO GOVERNMENT, LABOUR AND
REHABILITATION (R) DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. THE WELFARE FUND INSPECTOR,
TODDY WORKERS WELFARE FUND BOARD, KOLLAM.

R2-BY ADV.SRI.RENIL ANTO
R1-BY G.P.SRI.M.R.SABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

W.P.(C)NO.27116 OF 2007-C

Dated this the 12th day of September, 2007.

JUDGMENT

The challenge in this writ petition is against the orders passed under the Toddy Workers Welfare Fund Act 1969, fastening liability on the petitioner's father. Ext.P1 is a final determination for the year 1997-98 and the appeal filed against the said order has been rejected by Ext.P3. According to the petitioner, his father was not a licensee and this fact is certified by the Assistant Excise Commissioner in Ext.P4. On the contrary, the contention of the standing counsel for the 2nd respondent Board is that the petitioner's father was conducting the toddy shops in question on the basis of an agreement with the licensee and that this factual issue could be proved with a documentary evidence. It is on that basis, the final determination order was passed and which was confirmed by the appellate authority in Ext.P3 order.

2. The learned counsel for the writ petitioner reiterates the plea that his father was not a licensee. She refers me the judgment of the Supreme Court in **Joseph Joseph v. State of Kerala** (ILR 2002(2) Kerala 390). Referring to this judgment, the learned

counsel submits that the petitioner's father could not be treated as an employer. However, on reading the judgment, I find that ordinarily only the licensee can be made liable for the contribution under the Act but, if in any particular case the authorities find that besides the licensee any other person conducting the business is also liable to contribute to the fund under the Act, such persons can also be made liable provided the authorities discharge their legal duty to assert and positively hold that such persons were also employers vis-a-vis the workers and that they were conducting the business with the legal authority either of the licensee or the licensing authority. In this case the 2nd respondent could satisfy the authorities that there was an agreement on the basis of which the shops were being conducted by the petitioner's deceased father and oral evidence was also let in. Such factual findings rendered by the authorities cannot be upset in a proceedings under Article 226 and I do not find any perversity in the findings.

In the circumstances, the orders are only to be upheld and I do so. The writ petition lacks merit and is dismissed.

ANTONY DOMINIC, JUDGE.

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